

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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Review of the Commission's
Regulations Governing Television
Broadcasting

MM Docket No. 91-221

Television Satellite Stations
Review of Policy and Rules

MM Docket No. 87-8

COMMENTS OF

Black Citizens for a Fair Media
Center for Media Education
Chinese for Affirmative Action
Communications Task Force
Hispanic Bar Association
League of United Latin American Citizens
National Conference of Puerto Rican Women
Office of Communications of the United Church of Christ
Philadelphia Lesbian and Gay Task Force
Telecommunications Research Action Center
Wider Opportunities for Women
Women's Institute for Freedom of the Press

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SUMMARY

The Commenters are public interest organizations representing the interests and viewpoints of broadcast television viewers and listeners all across the country. Commenters oppose relaxation of the television ownership rules because of the detrimental impact relaxation would have on the diversity of programming available to listeners and viewers, especially in the area of news, public affairs, and issue responsive programming. Local news and public affairs programming addressing issues of concern to the local community lie at the core of the Commission's goal of promoting viewpoint diversity in broadcast programming. In furtherance of its goal to ensure diversity for viewers and listeners, the Commission has long relied upon the traditional belief that viewpoint diversity is achieved through diversifying station ownership. Because there is no empirical evidence demonstrating that greater ownership concentration contributes to viewpoint diversity, especially in local news and issue-responsive programming, the Commenters strongly support retention of the traditional view.

For purposes of assessing viewpoint diversity in broadcast programming, there is no substitute for broadcast television. Unlike most other media outlet alternatives suggested by the Commission, broadcasters have a public trust obligation to air programming addressing issues of concern to their community. Moreover, broadcast television is most relied upon by viewers and listeners for such information. Finally, skills and costs

entailed with using alternative information sources present serious access concerns that are not raised by broadcast television.

Thus, to fulfill the Commission's statutory obligation to promote viewpoint diversity, the local multiple ownership rules, the national multiple ownership rules, and the radio-television cross-ownership rules should all be retained without modification. However, we do support removal of the exemption for satellite television stations from the national multiple ownership limits, since the rationale underlying this exemption no longer exists.

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The Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic Bar Association, League of United Latin American Citizens, National Conference of Puerto Rican Women, Office of Communications of the United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research Action Center, Wider Opportunities for Women, and the Women's Institute for Freedom of the Press respectfully submit the following Comments in response to the Commission's Further Notice of Proposed Rule Making, FCC 94-322, released January 17, 1995

[hereinafter Further Notice, or FNPRM].

Commenters are public interest organizations representing the interests and viewpoints of thousands of broadcast television viewers and listeners all around the country.¹

¹ **Black Citizens for a Fair Media** has been an active participant before the Commission, the Courts and the Department of Justice on communications issues for more than 30 years.

The **Center for Media Education** (CME) was founded in 1991 to improve the quality of electronic media on behalf of children, families, nonprofit groups and the general public. To carry out its mission, CME engages in a variety of activities, including public education, research, advocacy and outreach to the press.

Founded in 1969, **Chinese for Affirmative Action** is a voluntary membership supported by tax-exempt organizations dedicated to promoting equal opportunities for Asian Americans and other racial minorities. Chinese for Affirmative has worked with members of the broadcast industry to promote employment opportunities and to advocate an accurate portrayal of Asian Americans in the mass media.

The **Communications Task Force** was founded in the mid-1970's and is comprised of lawyers, consultants, broadcasters, government employees, journalists and corporate executives involved in the telecommunications field. The Task Force works to promote equal employment opportunity, diversity in ownership and balanced program content in the telecommunications industry.

The **Hispanic Bar Association of the District of Columbia** (HBA) is a non-profit corporation founded in 1977 to promote equal justice and opportunity for all Hispanics. In addition to its work in advancing the professional status of Hispanic lawyers, HBA gives voice to the concerns of the Hispanic community in submissions before governmental bodies on a wide range of policy issues, including telecommunications.

League of the United Latin American Citizens (LULAC) is the oldest and largest national Hispanic membership organization chartered in 1929 with over 100,000 members throughout the country. Its objectives are to protect and defend the civil rights of all Americans, and to improve the quality of life for all Americans. LULAC has often appeared before the FCC to vindicate the rights of minorities, particularly Hispanics, who are denied the full enjoyment of their constitutional rights.

Established in 1975, the **National Conference of Puerto Rican Women** is a non-profit organization to promote the equal participation of Puerto Rican and other Latina women in the social, economic, and political life of the United States. NACOPRW fulfills its mission through educational programs and advocacy which promotes equal access of Puerto Rican and other Latina women to all institutional sectors, including the telecommunications

The Commission issued this Further Notice to seek information concerning diversity and competition issues in broadcast television and to reconsider the broadcast television station ownership rules. Due to the Commission's unequivocal statutory public interest obligation to promote a diversity of viewpoints in news and other programming addressing issues of

industry.

For the past 25 years, the **Office of Communications of the United Church of Christ** has been a stalwart civil advocate on behalf of the public interest. The Office of Communication represents those traditionally disenfranchised from the electronic media: the elderly, the disabled, low-income individuals, and minorities.

The **Philadelphia Lesbian and Gay Task Force** is a civil and human rights advocacy organization formed in 1978. Its statewide research efforts in discrimination and violence, as well as its negotiations in public policy, focus on civil rights, mass media equity, and education equity goals on behalf of nearly one million gay and lesbian people, multiracially, in Pennsylvania and about 160,000 people in Philadelphia. Since 1989, the Task Force has been extensively involved in mass media research as well as women and minority coalition efforts to challenge Philadelphia broadcast licensees for the consistent underrepresentation, marginalization, and devaluation of women and racial and ethnic minorities in both programming and employment.

Telecommunications Research and Action Center is a non-profit, tax-exempt organization dealing with telecommunications issues. TRAC has a membership of about 1,000 and traditionally TRAC has had a strong advocacy program based on opposition to consumer access line charges, local measured service and a generally pro-regulatory position.

Wider Opportunities for Women (WOW) is a national women's employment organization that works to achieve economic independence and equality of opportunity for women and girls. For nearly 30 years, WOW has helped women learn to earn, with programs emphasizing literacy, technical and nontraditional skills, and career development. WOW also leads the Women's Work Force Network, which is comprised of over 500 independent women's employment programs and reaches more than 300,000 women each year.

The **Women's Institute for Freedom of the Press** is a network of some 800 media women and media-concerned women working toward expanding exercise of our citizen right to freedom of the press in all forms of media. Founded in 1972, we do educational work, research, and publishing to advance equality of media access to the public.

importance to local communities, Commenters strongly urge the Commission to preserve broadcast television ownership rules as they currently stand. Thus, these Comments focus upon the diversity framework that is proposed by the Commission in Section IV of the Further Notice.²

These Comments first critique the analytical framework recommended by the Commission for assessing diversity. The traditional concept of diversity -- that there is a strong nexus between diversity of station ownership and diversity in viewpoints espoused over public airwaves -- remains valid and essential to the Commission's ability to fulfill its statutory mandate.

The Comments next demonstrate that despite the proliferation of media outlet alternatives, there is no adequate substitute for broadcast television with respect to news and public affairs programming, especially at the local level. Therefore, the Commenters urge the Commission to retain the existing local and national ownership rules, as well as the existing radio-television cross-ownership rules. However, the Commenters do support termination of the exemption of satellite television stations from the national multiple ownership limits.

² Commenters have not addressed the competitive analysis of television broadcasting set forth in Part III of the Further Notice. Commenters lack the resources to undertake the kind of economic analysis requested by the Commission in the Further Notice. Commenters recognize they benefit from both the competition and diversity promoted by the ownership limits as they exist, however, Commenters believe they are most directly affected by the diversity concerns raised by the Further Notice.

I. COMMENTS REGARDING DIVERSITY ANALYSIS OF TELEVISION BROADCASTING

In the Further Notice, the Commission lays out its traditional diversity goals and considers whether a new approach for defining diversity is warranted.³ Furthermore, the Commission questions whether the product market traditionally examined for diversity purposes should be broadened to include cable and other sources of video programming and information.⁴

These comments show that local news, public affairs, and issue-responsive programming are at the core of the Commission's goals to foster diversity, and viewpoint diversity in these types of programming can only be attained through diversity of ownership of broadcast stations. Thus, the Commission should reaffirm its traditional view that ownership diversity remains essential to the Commission's ability to promote viewpoint diversity. Furthermore, no other sources of video programming are at present adequate substitutes for broadcast television with respect to viewpoint diversity.

A. Local news and public affairs programming addressing issues of concern to local communities are central to the Commission's concern for diversity of viewpoint in broadcast programming.

Local news, public affairs and issue-responsive programming lie at the core of the Commission's goal of fostering diversity

³ Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Further Notice of Proposed Rulemaking in MM Docket Nos. 91-221 and 87-8, at ¶ 57-63 [hereinafter Further Notice, or FNPRM].

⁴ Id. at ¶ 65.

in broadcast programming. The Commission has consistently maintained that all broadcast licensees have an obligation "to provide programming that responds to issues of concern to the community."⁵ As the Commission explains in the Further Notice:

An over-the-air broadcast television station is required to provide programming responsive to issues facing its local community, afford equal opportunities to political candidates, and to provide reasonable access to candidates for federal elective office. These are bedrock public interest obligations retained by broadcast stations and involve interests central to the Commission's concern with diversity.⁶

Indeed, the Commission itself notes that entertainment programs are not relevant to the Commission's overriding goal of increasing viewpoint diversity.⁷

B. The Commission should reaffirm its traditional view that diversified ownership leads to program diversity.

In furtherance of its statutory goal to promote viewpoint diversity in local news and public affairs programming, the Commission has long held that there is a strong nexus between

⁵ The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Report and Order in MM Docket No. 83-670, 98 FCC 2d 1076, 1077 (1984) [hereinafter Television Deregulation]. See also Television Deregulation, Memorandum Opinion and Order in MM Docket 83-670, 104 FCC 2d 358, 364 (1986) ("The individual licensee has the nondelegable duty to contribute to the overall discussion of issues confronting the community."); Deregulation of Radio, Report and Order in BC Docket No. 79-219, 84 FCC 2d 968, 978 (1981) ("We do expect, and will require, radio broadcasters to be responsive to the issues facing their community."); Deregulation of Radio, Second Report and Order in BC Docket No. 79-219, 96 FCC 2d 930, 931 (1984) ("A station still is expected to address those issues that it believes are of importance to its community of license").

⁶ FNPRM at ¶ 66 (emphasis added).

⁷ Id. at n. 93.

diversity in station ownership and diversity of viewpoints espoused over the public airwaves.⁸ In paragraph 63 of the FNPRM, however, the Commission asks whether this longstanding principle still holds true and offers a contrary school of thought for consideration. Specifically, the Commission considers whether concentrated ownership of broadcast stations leads to greater diversity. As discussed below, the idea that greater concentration of ownership may lead to greater viewpoint diversity is problematic in several respects. First, there is no empirical support for the notion that concentration of ownership contributes to greater viewpoint diversity. Second, viewpoint diversity can only be achieved through the interplay of diverse and antagonistic sources. Third, the benefits arising from further concentration of ownership would only benefit larger group owners and decrease diversity by threatening the survival of smaller owners. Thus, the Commenters strongly urge the Commission to uphold its traditional view of diversity and to reject the erroneous notion that concentrated ownership might contribute to greater viewpoint diversity in news and public affairs programming.

⁸ FNPRM at ¶ 62 (citing Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership Standard, FM and Television Broadcast Stations, First Report and Order in Docket No. 18110, 22 FCC 2d 306, 311 (1970), recon. granted in part, 28 FCC 2d 662 (1971); Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules, Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd 1471, 1476-77 (1988)).

1. **Empirical evidence overwhelmingly shows that greater concentration of ownership leads to decreased diversity of viewpoints expressed through news and public affairs.**

The Further Notice expresses concern that while increased concentration of ownership "may, indeed, promote diversity of entertainment formats and programs, we question whether it would act similarly with regard to news and public affairs programming."⁹ In fact, the evidence is clear that increased concentration of station ownership reduces viewpoint diversity in local news and public affairs programming. As TRAC/WACCI-VCR and OC/UCC have shown in prior comments to this proceeding, increased ownership concentration, caused in part by prior deregulation, has led to significant decreases in news and public affairs programming.¹⁰ Their comments show that although changes in the national ownership limits in 1984 and relaxation of the one-to-a-market rule in 1989 may have enhanced station resources enabling

⁹ FNPRM at ¶ 63.

¹⁰ See TRAC/WACCI-VCR Reply Comments, Review of Commission's Regulations Governing Television Broadcasting, Notice of Inquiry in MM Docket No. 91-221, filed Nov. 21, 1991, at 16-17 [hereinafter TRAC/WACCI-VCR Reply Comments]; OC/UCC Comments, Review of Commission's Regulations Governing Television Broadcasting, Notice of Proposed Rule Making in MM Docket No. 91-221, filed Nov. 21, 1991, app. at 15 [hereinafter OC/UCC Comments]. In a study attached at the end of OC/UCC Comments, entitled The Public Cost of TV Deregulation: A Study of the Decline of Informational Programming on Commercial TV, the OC/UCC assessed the impact of television deregulation on non-entertainment programming by comparing the quantity of such programming aired by commercial television stations before and after the Commission's 1984 deregulatory measures. Id. at app. at 11. Examining a random sample of markets from 1974, 1979, 1984, and 1989, the study found that the amount of locally produced news and public affairs programming decreased as a result of deregulation. Id. at app. at 15.

stations to realize greater efficiencies, they have not led to increased news, public affairs and community affairs programming.¹¹ Instead, the comments show that deregulation has made such news and issue-responsive programming prime targets for budget cuts and has contributed to the demise of local news operations.¹² Therefore, although ownership concentration might in theory enhance the resources a group owner devotes to its news operations through realized efficiencies, in practice, it has not.¹³

A 1988-89 survey conducted by the RTNDA concluded that deregulation affected the decisions of many television stations in eliminating programming news.¹⁴ Of all responding television stations, 88.9% said that news was not a part of their mission,

¹¹ See TRAC/WACCI-VCR Reply Comments, supra note 10, at 16-17; OC/UCC Comments, supra note 10, at app. at 15. See also P. Aufderheide, After the Fairness Doctrine: Controversial Broadcast Programming and the Public Interest, 40 J. of Comm. 47, 51 (1990) (citing studies showing that deregulation has led to decreased news, public affairs, and community affairs programming); Public Interest in Broadcasting: Hearings Before the Subcommittee on Telecommunications and Finance of the House of Representatives Committee on Energy and Commerce, 102nd Cong., 1st Sess. 230 (1991) (Testimony of Beverly J. Chain, director, Office of Communication, United Church of Christ) (stating that deregulation has led to a decrease in "issue-oriented local public affairs programming aired by commercial television stations").

¹² See TRAC/WACCI-VCR Reply Comments, supra note 10, at 16-17; OC/UCC Comments, supra note 10, at app. at 15.

¹³ Moreover, concentration of ownership undercuts localism. As OC/UCC noted, group owned stations air mostly nationally syndicated news and public affairs programming and provide less locally produced public affairs programming. OC/UCC Comments, supra note 10, at 13.

¹⁴ M. McKean and V. Stone, Why Stations Don't Do News, RTNDA Communicator, June 1991, at 22.

and 90.9% stated that they felt their markets' news needs were served well without them.¹⁵ But in markets where the majority of these television stations were located, there was no local television news alternative to the network affiliates.¹⁶

Although 50% of responding television stations claimed that they could not afford to provide local news coverage, the survey found that 71.8% of these stations experienced advertising revenue growth in the previous five years.¹⁷

The survey also found that deregulation influenced the decisions of radio stations to eliminate news programs.¹⁸ The survey found that 46.2% of commercial radio stations ceased their local news operations, and 60% said they dropped local news because it was not a part of their mission.¹⁹ Although 20% of responding commercial radio stations claimed that they stopped news because they could not afford it, the survey found that 75% of the responding commercial radio stations actually experienced revenue growth in the previous five years.²⁰

In addition, the notion that ownership concentration contributes to viewpoint diversity is not supported by any

¹⁵ Id. at 24.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 22.

¹⁹ Id.

²⁰ Id. at 24.

empirical evidence.²¹ The only evidence cited in the Further Notice was a submission by CBS, in a prior rule making proceeding, that its stations had some autonomy in endorsing opposing candidates in elections and taking different editorial positions.²² At best, this shows that CBS, which owns fewer than twelve of the 1,520 broadcast television stations,²³ chooses not to dictate the position of these few stations with regard to candidate endorsements and editorials.²⁴ In offering this evidence, CBS does not speak to diversity as whole, so it cannot prove that greater concentration of ownership contributes to viewpoint diversity.

Thus, the effects of greater concentration of station ownership are clear. More concentrated ownership, resulting from deregulation, is deleterious to the Commission's statutory

²¹ Although the Commission cites to Report and Order in Gen. Docket No. 83-1009 as possible support for the hypothesis, it also acknowledges that nothing in the Report and Order addresses the effect of ownership concentration on viewpoint diversity in local markets. FNPRM at n. 79 (citing Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Report and Order in Gen. Docket No. 83-1009, 100 FCC 2d 17, 31-37 (1984)).

²² FNPRM at n. 79 (citing Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd at 1744).

²³ Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992; Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, First Report in CS Docket No. 94-48, 9 FCC Rcd 7442, 7493 (1994) [hereinafter 1994 Cable Competition Report].

²⁴ Moreover, broadcast editorials have dramatically decreased over the years, and many stations "no longer take on-air stances on issues affecting their communities." The Vanishing Editorialist, Electronic Media, Sept. 24, 1990, front cover.

mandate to ensure viewpoint diversity in local news and public affairs programming. Any further deregulation will undoubtedly result in not only further diminished viewpoint diversity in such programming, but the loss of such programming altogether.

2. Viewpoint diversity can only be attained through the interplay of diverse and antagonistic sources.

The idea that greater concentration of ownership may result in greater viewpoint diversity also ignores the reality that such diversity can only be achieved through the interplay of diverse and antagonistic sources.²⁵ A diversity of outlets is essential to "real viewpoint diversity," because "if all programming passed through the same filter, the material and views presented to the public would not be diverse."²⁶

The last time the Commission reviewed its national ownership limits for television, it concluded that "it [was] unrealistic to expect true diversity from [common ownership]. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run."²⁷ Thus, it would be irrelevant that a group owner would "put on a sufficiently varied programming

²⁵ FNPRM at ¶ 57; Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd at 1473; Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, Report and Order in Docket No. 14711, 45 FCC 1476, 1477 (1964). See also V.E. Ferrall, The Impact of Television Deregulation on Private and Public Interests, 39 J. of Comm. 8, 30 (1989) (citing Associated Press v. United States, 326 U.S. 1, 20 (1945)).

²⁶ FNPRM at ¶ 61.

²⁷ Amendment of Sections 73.35, 73.240, and 73.636, Second Report and Order in Docket No. 18110, 50 FCC 2d 1046, 1079-80 (1975).

menu in each time slot to appeal to all substantial interests," because having "passed through the same filter," such programming could not be truly diverse.²⁸ The claim by several broadcasters that they do not impose a "monolithic viewpoint"²⁹ among their stations does not diminish the importance of this concern. The concern appropriately rests in the group owner's ability to impose this monolithic viewpoint, whether it does so or not. Moreover, a broadcaster's ability to influence viewpoints need not be explicitly exercised; for instance, the preservation of a monolithic viewpoint might be accomplished via hiring and promotion decisions made by the station's owner.³⁰

3. Any economic efficiencies derived by large group owners from greater ownership concentration will diminish the competitive abilities of smaller broadcasters.

Further concentration of ownership would actually decrease diversity, as large group owners significantly improve their competitive positions with respect to smaller broadcasters. Since only those station owners that are close to current ownership caps would benefit from increased ownership limits,

²⁸ FNPRM at ¶ 63.

²⁹ Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd at 1744. As evidence, they claim that local stations have significant autonomy in news coverage and editorials. Id.

³⁰ A station owner's ability to influence the station's hiring practices can be subtle and indirect. In 1993, a news director at WTTG-TV, who previously worked at three other similarly owned properties, stated his intention to replace news reporters who were considered too liberal and to consult with conservative activists in making such replacements. H. Kurtz, Weeding Out Liberals At WTTG?; News Chief Backs Off Memo About Staff, W. Post, Sept. 9, 1993, at D1.

smaller owners would not be able to take advantage of the economic benefits offered by rule relaxation. Thus, the economic benefits of rule relaxation would only be enjoyed by larger group owners, while the competitive viability of smaller group owners would be undermined, threatening their survival and the diverse viewpoints they represent.

Moreover, it is not certain that group owners would realize any additional efficiencies from further relaxation of the multiple ownership rules, since most group owners have not even reached current multiple ownership limits. As the Commission itself points out, in 1993, most of the top 25 television group owners had not reached the national multiple ownership limits.³¹ In addition, television station owners have already been able to secure desired efficiencies in many other ways, including producing newscasts for other broadcast stations,³² employing local marketing agreements, and obtaining waivers from current multiple ownership limits.

In sum, diversity of station ownership is crucial to the Commission's ability to fulfill its statutory mandate to promote viewpoint diversity in news and issue-responsive programming, and the notion that greater ownership concentration contributes to viewpoint diversity must be rejected.

³¹ FNPRM at n. 111.

³² See, e.g., Communications Daily, Apr. 13, 1995, at 11 (Washington, D.C. all-news cable channel, News Channel 8, to produce daily newscasts for Washington, D.C. Channel 20).

- C. In assessing viewpoint diversity, there is no substitute for broadcast television with respect to local news and issue-responsive, public affairs programming.

For viewpoint diversity purposes, there is no substitute for broadcast television. As the Commission reiterated in paragraph 63 of this FNPRM, and as these comments discussed above, the Commission's goal to ensure viewpoint diversity focuses on the presentation of news and issue-responsive programming. Thus, only those media outlets that provide news and public affairs programming substantially comparable to broadcast television may be considered effective substitutes for broadcast television. The FNPRM lists cable television, newspapers, radio, direct broadcast satellites (DBS), wireless cable (MMDS), video dialtone (VDT), video cassette recorders (VCRs), and computer networks and services as potential substitutes to broadcast television.³³ But as shown below, none of these alternatives are effective substitutes for television broadcasters in providing local news and public affairs programming.³⁴

First, unlike MMDS, VDT, VCRs, and computer networks and services, television broadcasters have a statutory obligation to

³³ FNPRM at ¶ 65.

³⁴ See also G.B. Sohn and A.J. Schwartzman, Broadcast Licensees and Localism: At Home in the 'Communications Revolution', 39 Fed. Com. L.J. 383, 386 (Dec. 1994) (Broadcasters have the unique capability of providing "universally obtainable, real time services that are inherently locally based.").

broadcast in the public interest.³⁵ Television broadcasters are public trustees of the airwaves and have a concomitant obligation to serve the public interest in their programming.³⁶ Other media outlets do not share this special public trust relationship with the American people.³⁷ For instance, cable television and video dialtone providers do not use the public airwaves; instead, they use cables that electronically transmit their signals for direct reception by viewers.³⁸ Similarly, computer networks and services, such as the Internet, and providers of previously recorded programs, such as video cassettes, do not share broadcast television's public trustee obligations.

As the Supreme Court recently acknowledged, a less rigorous standard of First Amendment scrutiny applies to broadcast regulation because of the unique physical limitations of broadcasting.³⁹ Citing Red Lion, it states the "the inherent physical limitation on the number of speakers who may use the

³⁵ FCC v. Nat'l Citizens Comm. For Broadcasting, 436 U.S. 775, 795 (1978) (citing Associated Press, 326 U.S. at 20); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 385, 390 (1969). Radio broadcasters also have a statutory obligation to broadcast in the public interest. However, as discussed infra in Section IC, radio is not readily relied on by viewers and listeners for local news and issue responsive programming.

³⁶ See id.

³⁷ Although DBS and radio broadcasters also share this public trust relationship, other reasons discussed infra demonstrate that they cannot be adequate substitutes for broadcast television.

³⁸ Turner Broadcasting System, Inc. v. FCC, 114 S.Ct. 2445, 2452 (1994).

³⁹ Id.

broadcast medium has been thought to require some adjustment in traditional First Amendment analysis to permit the Government to . . . impose certain affirmative obligations, on broadcast licensees."⁴⁰ Cable and other suggested substitutes do not share the same "inherent limitations that characterize the broadcast medium" and are not subject to public trustee obligations of broadcasters.⁴¹ Thus, unlike broadcast television, cable television and other suggested substitutes are not subject to the same public trustee obligation to serve local communities through issue responsive programming.

In addition to the fact that broadcast television has an affirmative statutory obligation to broadcast in the public interest, broadcast television is also the medium that is most relied upon for local news and public affairs programming. As the Commission's own Office of Plans and Policy (OPP) reported in a Working Paper entitled Broadcast Television in a Multichannel Marketplace, "local programming, particularly news and public affairs, is the single program service that. . . remains primarily the domain of local broadcasters."⁴² Other studies echo OPP's finding. One recent study found that more than 70% of the public say they depend upon broadcast television for most of

⁴⁰ Id. at 2457.

⁴¹ Id. See also FCC v. Pacifica Foundation, 438 U.S. 726, 748 (1978) (reaffirming that broadcasting has received the most limited First Amendment protection).

⁴² Office of Plans and Policy Working Paper, Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd 3996, 4087 (1991) [hereinafter OPP Report].

their local news.⁴³ Another study reported that 75% of the population regard television as its principal source of news and information.⁴⁴ It concluded that "[b]roadcasting over the airwaves--whether in the form of paid advertising, news, or editorials--is the single greatest source of public information on social issues."⁴⁵ Indeed, in the 1994 Cable Competition Report, the Commission emphasized that broadcast television remains an important outlet for local news and public affairs programs.⁴⁶

Moreover, a study by the American Society of Newspaper Editors revealed that 50% of Americans prefer television news for

⁴³ D. Bartlett, The Soul of a News Machine; Electronic Journalism in the Twenty-First Century, 47 Fed. Com. L.J. 1, 17 (Oct. 1994) (citing Counselor Offers Rules to Live By in the Future World of PR, PR Services, July 1994, at 14, 14).

⁴⁴ Democracy by Initiative: Shaping California's Fourth Branch of Government, California Commission on Campaign Financing, at 14 (1992).

⁴⁵ Id. "Polls consistently report that three-quarters of all Americans cite television as their principal source of information." Id. (citing T. Westen and B. Givens, The California Channel: A New Public Affairs Channel for the State, at 31 (1989)).

⁴⁶ 1994 Cable Competition Report, 9 FCC Rcd at 7492. Furthermore, the retransmission consent option under the 1992 Cable Act and the current regulations may present television broadcasters with additional incentive to produce substantially more local news and information programming. L. Veraldi, Newscasts as Property: Will Retransmission Consent Stimulate Production of More Local Television News?, 46 Fed. Com. L.J. 469, 487 (June 1994). The incentive for production of more local news programming arises from the retransmission consent option's potential for creating a dual revenue stream for broadcasters. Id.

coverage of local issues.⁴⁷ A more recent study, conducted by the Roper Organization and Television Information Office, reports that television is the primary media source of news for 72% of Americans.⁴⁸ Moreover, 45% of all Americans cite television as their only news source.⁴⁹ In addition, more than 51% of the public consider television the most credible medium, while only 21% view newspapers as most credible, and only 8% considered radio most credible.⁵⁰ Furthermore, most Americans look to television as their primary source of public service information.⁵¹

Finally, broadcast television is the only mass media service through which the Commission can create a national marketplace of ideas in which all members of the American public may participate. As the networks have stated in comments to prior proceedings, the Commission has a compelling interest to create

⁴⁷ M.A. Conrad, The Demise of the Fairness Doctrine: A Blow for Citizen Access, 41 Fed. Com. L.J. 161, 191 n. 155 (Apr. 1989) (citing Radolf, Television News Rates High, Editor and Publisher, Apr. 13, 1985, at 9).

⁴⁸ Roper Organization and Television Information Office. America's Watching Public Attitudes Toward Television. New York: Television Information Office, 1995, at 17 [hereinafter Roper Report].

⁴⁹ Id. at 34.

⁵⁰ Id. at 18.

⁵¹ Id. at 19. In another recent study released by the Television Bureau of Advertising, Americans were found to spend an average three hours and 37 minutes a day watching television, compared with an average two hours and three minutes a day listening to the radio and only 29 minutes a day reading the newspaper. S. McClellan, Television Advertising Tops Newspapers, Broadcasting and Cable, Apr. 17, 1995, at 62.

and maintain a universal forum for the exchange of national and local discourse that is freely open to all members of the public. Broadcast television is the only media service that enables the Commission to achieve this goal. Unlike other services, broadcast television is freely accessible to everyone. Moreover, unlike other media sources that narrowly tailor their services to the specific interests of particular market segments (such as the Internet and cable television channels), broadcast television airs programming with broader interests, designed to have general appeal to national and local audiences. Thus, broadcast television most ideally enables the Commission to provide universal access to a national marketplace of ideas.

As these studies indicate, broadcast television has been the most important source of local news and information for most Americans. This reality, coupled with the fact that broadcast television has a special public trustee obligation to serve the community, strongly suggests that no other mass communication medium should be considered an effective substitute for broadcast television for diversity purposes. Nevertheless, a review of what actually is available on alternative media outlets demonstrates that they must be rejected as adequate substitutes for broadcast television.

1. **Cable television is not an effective substitute for broadcast television with respect to local news and public affairs programming.**

Cable television is not an effective substitute for broadcast television for several reasons. As an initial matter,